

## REMARKS

Claims 1-19 and 23-27 were pending in the above-captioned patent application prior to this amendment. Claims 20-22 were previously canceled. Claims 1 and 13 are amended herein.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 102

The Examiner rejected claims 1-7, 12, and 23 under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent Application Publication No. 2002/0065494 A1 to Lockwood et al. (hereinafter Lockwood). In the Examiner's rejection, the Examiner asserted that "[r]egarding claim 1, Lockwood teaches a vacuum bandage system (10, 12) . . . comprising a wound dressing member (52) made generally of a non-porous material having a plurality of holes and a port (70) in communication with the holes . . . and a wound insert (20) . . ., and a cover (62) capable of placement over the wound dressing member (52)." See pages 2 and 3 of the 9/30/08 Office Action.

Respectfully, Applicants disagree with the Examiner's interpretation of Lockwood. In particular, the cover 52 of Lockwood, which the Examiner asserts is the claimed "wound dressing member" does not include both "a plurality of holes" and "a port in communication with the holes and configured to be coupled to a vacuum source" as is required by claim 1 of the present application. To the contrary, the cover 52 of Lockwood includes only one or more ports coupled to a vacuum source. As shown in FIG. 3, for example, the cover 52 includes a single port in communication with the vacuum/irrigation tube 13. Further, as shown in FIG. 15, for example, the cover 52 includes multiple ports each in communication with a single port or tube 70 which are each, in turn, in communication with the vacuum and/or irrigation source 12, 14 of Lockwood. As such, neither the cover 52 of FIG. 1 nor the cover 52 of FIG. 15 includes "a plurality of holes" in addition to a port that is configured to be coupled to a vacuum source. Rather, such covers 52 include only one or more ports coupled to a vacuum source.

Furthermore, claim 1 is amended herein to recite that port is in communication with the holes “via one or more passageways formed in the wound dressing member between the port and the holes.” Lockwood does not disclose or suggest any such passageways formed in any of the covers 52 of Lockwood to provide communication between any port and a plurality of holes also formed in the covers 52 of Lockwood. In other words, none of the multiple vacuum ports formed in the cover 52 shown in FIG. 15 of Lockwood are in communication with each other *via one or more passageways formed in the cover*. As such, the cover 52 does not include any port “in communication with the [plurality of] holes” of the wound dressing member “via one or more passageways formed in the wound dressing member between the port and the holes” as is recited in newly amended claim 1.

Finally, the cover 52 of Lockwood is not “configured to engage at least a portion of the wound surface of the wound” as is also recited in claim 1 of the present application. Rather, the cover 52 is sized and shaped to rest on the wound dressing member 20 of Lockwood. Nowhere does Lockwood disclose or suggest otherwise. For example, as shown in FIGS. 1-16 of Lockwood, the cover 52 rests on and is adhered to the opposite (or top) surface 24 of the member 20 and is the same size and shape as the member 20 such that in use, no portion of the cover 52 engages the wound surface of the wound. See FIG. 7 of Lockwood. Rather, it is the wound dressing member 20 of Lockwood (and not the cover 52 of Lockwood) that is configured to engage the wound surface. Accordingly, the cover 52 of Lockwood is not “configured to engage at least a portion of the wound surface of the wound” as is recited in claim 1.

For all of the aforementioned reasons, Lockwood does not disclose or suggest the vacuum bandage system of claim 1 of the present application. Anticipation exists only if all the elements of the claimed invention are present in a product or process disclosed, expressly or inherently, in a single prior art reference. *Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984). Thus, a reference does not anticipate a claim if the claim contains any limitation that is neither literally nor inherently present in that reference. Accordingly, independent claim 1 is not anticipated by Lockwood because Lockwood does not include all of the limitations of claim 1.

As such, reconsideration of this rejection as it applies to claim 1, as well as claims 2-7 and 23, depending either directly or indirectly from claim 1, is respectfully requested.

In regards to claim 12, Lockwood does not disclose or suggest any “bores through the body extending from one side surface to another.” While the member 20 of Lockwood includes channels 28, 30, 32, 34 respectively formed in the top and bottom surfaces 24, 22 of the member 20, such open channels 28, 30, 32, 34 do not form bores through the member 20. One skilled in the art would readily understand that a bore is distinct from the channels 28, 30, 32, 34 of Lockwood in that the cross-section through a bore forms an enclosed shape, such as a circle, for example. On the other hand, the cross-section through any one of the channels 28, 30, 32, 34 forms an open U-shape that is clearly not enclosed. Accordingly, the open channels 28, 30, 32, 34 formed in the outer surfaces 22, 24 of the member 20 of Lockwood are not bores. As such, Lockwood does not disclose or suggest “bores through body extending from one side surface to another” as is recited in claim 12. For at least this reason, Lockwood does not disclose or suggest the wound insert of claim 12 of the present application because Lockwood does not include all of the limitations of claim 12. As such, reconsideration of this rejection as it applies to claim 12 is respectfully requested.

The Examiner next rejected claims 1, 13, 14, 16, 19, 23-25, and 27-29 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,338,339 to La Mere et al. (hereinafter La Mere).

In making this rejection, the Examiner stated that “[r]egarding claim 1, La Mere teaches . . . a cover (54) capable of placement over the wound dressing member (44) to seal about the wound and create a sealed environment (45) between the wound and the cover (54).” See page 5 of the 9/30/08 Office Action.

Respectfully, Applicants disagree with the Examiner’s interpretation of La Mere. In particular, La Mere discloses a body 44 and a removable top member 54 coupled thereto by a pin 51. This top member 54 does not disclose or suggest any cover configured for placement over the wound dressing member to “seal about the wound and create a sealed environment

between the wound and the cover in which a negative pressure can be established” as is recited in claim 1 of the present application. In particular, the top member 54 does “seal about” any wound. Rather, the top member 54 rests on and is coupled to the top member 44 of the massaging vibrator of La Mere. Further, the top member 54 of La Mere does not “create a sealed environment between the *wound* and the cover.” To the contrary, the vibrator of La Mere is specifically intended to be moved around a patient to massage an area of a patient and is not intended to be sealed in any one position on a patient. While the Examiner asserts that “[e]lement 54 is a cover that is placed over the treatment device/site” and that “[v]acuum is provided to the chamber (45) above the treatment site,” this still does not preclude the fact that the top member 54 of La Mere does not operate to “seal about the wound” in order to “create a sealed environment between the wound and the cover.” In other words, the communication of negative pressure to the chamber 45 of La Mere does not necessarily create any such sealed environment.

In order to clarify this distinction, claim 1 is amended herein to recite that the cover is configured for placement over the wound dressing member “to engage healthy skin surrounding the wound in order to seal about the wound and create a sealed environment between the wound and the cover in which a negative pressure can be established.” La Mere does not disclose or suggest any such cover which operates to “engage healthy skin surrounding the wound in order to seal about the wound and create a sealed environment between the wound and the cover.”

Furthermore, claim 1 recites “a wound dressing member . . . configured to engage at least a portion of the wound.” The body 44 of La Mere does not engage and is not configured to engage any portion of any wound. Rather, the body 44 is spaced-apart from any surface which the massaging member M engages during operation. As such, La Mere also does not disclose or suggest a “wound dressing member . . . configured to engage at least a portion of the wound” as is recited in claim 1.

Accordingly, independent claim 1 is not anticipated by La Mere because La Mere does not include all of the limitations of claim 1. As such, withdrawal of the 35 U.S.C. §102(b) rejection of claim 1 based on La Mere, as well as claims 23-27 depending either directly or indirectly from claim 1, is respectfully requested.

Claim 13 is amended herein to recite that “a height of the cylindrical body is substantially greater than a diameter of the cylindrical body.” La Mere does not disclose or suggest such a limitation. Rather, as shown in FIGS. 8 and 9 of La Mere, it is clear that the diameter of the massaging member M of the La Mere is substantially greater than a height of the member M of La Mere.

Claim 13 is further amended herein to recite that “the body includes either (i) a solid top surface and a solid bottom surface, or (ii) a single passageway along a longitudinal axis of the body which extends between a top surface and a bottom surface of the body.” Nowhere does La Mere disclose or suggest either of such features. Rather, the massaging member M of La Mere includes a top surface and a bottom having a plurality of nipple apertures 24 formed through the massaging member M. In other words, the massaging member M of La Mere does not include a solid top surface or a solid bottom surface, let alone solid top *and* bottom surfaces. Further, the massaging member M of La Mere does not include a single passageway along a longitudinal axis of the body which extends between a top surface and a bottom surface of the body” such that the body defines a single, hollow tube. Accordingly, independent claim 13 is not anticipated by La Mere because La Mere does not include all of the limitations of claim 13. As such, withdrawal of the 35 U.S.C. §102(b) rejection of claim 13 based on La Mere, as well as claims 14, 16, 19, 28 and 29, depending either directly or indirectly from claim 13, is respectfully requested.

## CLAIM REJECTIONS UNDER 35 U.S.C. § 103 – THE DEPENDENT CLAIMS

The Examiner rejected claims 9-11 under 35 U.S.C. § 103(a) as being unpatentable over Lockwood. The Examiner further rejected claim 15 under 35 U.S.C. § 103(a) as being unpatentable over La Mere.

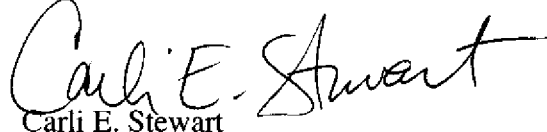
Each of the remaining claims 9-11 and 15 depend either directly or indirectly from one of independent claims 1 and 13 and incorporate all of the limitations the respective one of claims 1 and 13 therein. As such, in view of the amendments and arguments set forth above in regards to claims 1 and 13, it is respectfully requested that the rejection of dependent claims 9-11 and 15 be withdrawn. In light of such reasons set forth above for the withdrawal of the rejection of claims 1 and 13, any arguments specific to claims 9-11 and 15 are held in abeyance without prejudice or admission to any assertion made by the Examiner in order to expedite prosecution.

## FURTHER ACTION

In view of the foregoing remarks, the subject application is now deemed to be in condition for allowance, and such action is respectfully requested. If there are any questions or comments that would speed prosecution of this application, the Examiner is invited to call the undersigned at (317) 231-7216. It is respectfully requested that if necessary this paper be considered as a petition for a ONE-MONTH extension of time sufficient to effect a timely response and that any extension of time fees, as well as any other fees, be charged to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 with reference to file 7175-71861.

Respectfully submitted,

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